



BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of )  
P AND H AUCTIONEERS, INC. )

For Appellant: Raymond E. Wiltshire; Jr.,  
and Pryor M. Mathis, Jr.  
Certified Public Accountants

For Respondent: Burl D. Lack, Chief Counsel  
Wilbur F. Lavelle, Associate Tax  
Counsel

O P I N I O N

This appeal is made pursuant to section 25667 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protests of P and H Auctioneers, Inc., against proposed assessments of additional franchise tax in the amounts of \$99.58, \$116.98, \$132.10, and \$249.08 for the income years ended May 31, 1960, 1960, 1961, and 1961, respectively.

Appellant operates a livestock auction sales yard in Hanford, California. Its corporate stock is owned equally by two shareholder-officers. Each devotes all of his time to the business and they receive identical salaries.

On its federal and state tax returns, appellant claimed deductions for travel and entertainment expenses totalling \$11,562.65 during the income years ended May 31, 1960, and 1961. In addition, it claimed deductions totalling \$2,755.51 representing rental payments for a residence on the business premises furnished to one of the shareholders and his family, and the cost of utilities incurred for the personal residences of both shareholders.

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The Internal Revenue Service disallowed a portion of the expenses claimed by appellant on the basis that they were not substantiated as having been expended for business purposes. Respondent's notices of proposed assessments were based entirely upon the federal action. All of the amounts disallowed were considered by respondent to represent personal rather than business expenses and were treated as nondeductible dividends paid to the stockholders.'

Section 24343 of the Revenue and Taxation Code permits the deduction of all ordinary and necessary business expenses. Deductions, however, are a matter of legislative-grace and the burden is on the taxpayer to prove that the expenses are within the, **terms of the statute**, (New Colonial Ice Co. v. Helvering, 292 U.S. 435 [78 L. Ed. 1348].) . --

In connection with the residence furnished to one of the shareholders and his family, appellant alleges in its brief that it was necessary to have someone on the business premises at all times: It is not clear from the record whether all or only part of the rental expenses were disallowed. In any event, appellant has failed to submit any evidence in support of its allegations. In the absence of a showing that the disallowed expenses were for ordinary and necessary business purposes, **they** must be regarded as nondeductible distributions.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 25667 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protests of P and H Auctioneers, Inc., against proposed assessments of additional franchise tax in the amounts of \$99.58, \$116.98, \$132.10 and \$249.08 for the income years ended May 31, 1960, 1960, 1961, and 1961, respectively, be and the same is hereby sustained.

Done at Sacramento , California, this 23rd day of November , 1966, by the State Board of Equalization.

G. R. Leake, Chairman  
Paul R. Leake, Member  
Franklin H. Hoot, Member  
John W. Lynch, Member  
\_\_\_\_\_, Member

ATTEST:

[Signature], Secretary